UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| PLAINTIFF, | ) | |
| V. | ) | CASE NO.: SA CR 16-00036-CJC |
| | ) | SANTA ANA, CALIFORNIA |
| NIKISHNA POLEQUAPTEWA, | ) | MAY 6, 2016 |
| | ) | (2:07 P.M. TO 2:33 P.M.) |
| DEFENDANT. | ) | |

INITIAL APPEARANCE/POST-INDICTMENT ARRAIGNMENT

BEFORE THE HONORABLE JAY C. GANDHI
UNITED STATES MAGISTRATE JUDGE

| | |
|---|---|
| APPEARANCES: | SEE NEXT PAGE |
| COURT REPORTER: | RECORDED; COURTSMART |
| COURTROOM DEPUTY: | TERRI STEELE |
| TRANSCRIBER: | DOROTHY BABYKIN<br>COURTHOUSE SERVICES<br>1218 VALEBROOK PLACE<br>GLENDORA, CALIFORNIA 91740<br>(626) 963-0566 |

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

APPEARANCES: (CONTINUED)
FOR THE PLAINTIFF UNITED STATES OF AMERICA:

EILEEN DECKER
UNITED STATES ATTORNEY
LAWRENCE MIDDLETON, CHIEF
CRIMINAL DIVISION
ASSISTANT UNITED STATES ATTORNEY
BY: VIBHAV MITTAL
ASSISTANT UNITED STATES ATTORNEY
411 WEST FOURTH STREET
SUITE 8000
SANTA ANA, CALIFORNIA 92701

FOR THE DEFENDANT NIKISHNA POLEQUAPTEWA:

KHOURI LAW FIRM
BY: MICHAEL JOHN KHOURI
ATTORNEY AT LAW
4040 BARRANCA PARKWAY
SUITE 280
IRVINE, CALIFORNIA 92604

ALSO PRESENT:

MATTHEW A. BERLINER
ATTORNEY AT LAW

I N D E X

SA CR 16-00036-CJC MAY 6, 2016

PROCEEDINGS: INITIAL APPEARANCE AND POST-INDICTMENT ARRAIGNMENT

SANTA ANA, CALIFORNIA; FRIDAY, MAY 6, 2016; 2:07 P.M.

THE CLERK: ALL RISE. THIS COURT IS NOW IN SESSION. THE HONORABLE JAY C. GANDHI PRESIDING.

THE COURT: HAVE A SEAT, FOLKS.

THE CLERK: CALLING SANTA ANA CRIMINAL NUMBER 16-00036, UNITED STATES OF AMERICA VERSUS NIKISHNA POLEQUAPTEWA.

COUNSEL, PLEASE MAKE YOUR APPEARANCES.

MR. MITTAL: GOOD AFTERNOON, YOUR HONOR.

VIB MITTAL ON BEHALF OF THE UNITED STATES.

MR. KHOURI: GOOD AFTERNOON, YOUR HONOR.

MY NAME IS MIKE KHOURI, SPELLED K-H-O-U-R-I. I'M RETAINED COUNSEL FOR MR. POLEQUAPTEWA. HE'S PRESENT IN CUSTODY.

THE COURT: OKAY.

GOOD AFTERNOON, EVERYONE.

SIR, BEFORE WE PROCEED, I'M GOING TO READ YOU YOUR CONSTITUTIONAL AND STATUTORY RIGHTS IN CONNECTION WITH THESE PROCEEDINGS. OKAY.

SO, YOU ARE HERE BECAUSE YOU'VE BEEN CHARGED WITH A VIOLATION OF FEDERAL LAW. THE CHARGES AGAINST YOU ARE CONTAINED IN AN INDICTMENT. A COPY OF THE CHARGES HAS BEEN GIVEN TO YOU OR WILL BE GIVEN TO YOU.

YOU HAVE A RIGHT TO REMAIN SILENT.

YOU'RE ENTITLED TO A SPEEDY AND PUBLIC TRIAL BY A

JURY OR BY A JUDGE ALONE IF JURY IS WAIVED.

YOU'RE ENTITLED TO BE REPRESENTED BY COUNSEL AT ALL STAGES OF THE PROCEEDINGS.

YOU'RE ENTITLED TO BE PRESENT AT THIS ARRAIGNMENT AND ALL THE PROCEEDINGS WHICH FOLLOW, INCLUDING WITHOUT LIMITATION, THE TIME OF THE PLEA, EVERY STAGE OF THE TRIAL, INCLUDING THE IMPANELING OF THE JURY AND THE RETURN OF THE VERDICT, AND AT THE IMPOSITION OF ANY SENTENCE.

IF YOU DO NOT HAVE THE MONEY OR MEANS TO HIRE AN ATTORNEY, I WILL APPOINT AN ATTORNEY FOR YOU WITHOUT COST OR EXPENSE TO YOU.

HOWEVER, YOU'RE ADVISED THAT YOU MUST COMPLETE A FINANCIAL STATEMENT BEFORE COUNSEL WILL BE APPOINTED ON YOUR BEHALF.

IF YOU GIVE A FALSE OR DISHONEST ANSWER TO ANY QUESTION CONTAINED IN THE FINANCIAL STATEMENT, OR WILLFULLY FAIL TO RESPOND TO THE QUESTIONS ACCURATELY, YOU COULD BE SUBJECT TO FURTHER PROSECUTION FOR A VIOLATION OF FEDERAL LAW.

YOU'RE ENTITLED TO SEE AND HEAR THE EVIDENCE AND WITNESSES AGAINST YOU AND TO CROSS-EXAMINE THOSE WITNESSES.

YOU'RE ENTITLED TO SUBPOENA WITNESSES AND COMPEL THE PRODUCTION OF OTHER EVIDENCE ON YOUR OWN BEHALF.

YOU HAVE THE RIGHT TO HAVE THE COURT CONSIDER CONDITIONS OF YOUR RELEASE IN ACCORDANCE WITH THE BAIL REFORM ACT OF 1984.

IT IS NOT NECESSARY FOR YOU TO PROVE YOU ARE INNOCENT. IT IS THE BURDEN OF THE GOVERNMENT TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT.

FOR YOUR PLEA AND FURTHER PROCEEDINGS YOUR CASE HAS, OR YOUR CASE WILL BE TRANSFERRED TO A DISTRICT JUDGE. THE PARTICULAR JUDGE FOR YOUR CASE HAS BEEN SELECTED RANDOMLY.

SIR, DO YOU UNDERSTAND THOSE RIGHTS?

THE DEFENDANT: I DO.

THE COURT: OKAY.

AND HELP ME WITH THE PRONUNCIATION OF YOUR NAME. IS IT NIKISHNA POLY- --

THE DEFENDANT: NA-KISH-NA.

THE COURT: NA-KISH-NA.

THE DEFENDANT: PA-LEEK-KAP-TUA.

THE COURT: PA-LEEK-KAP-TUA.

AND THAT'S YOUR TRUE NAME, CORRECT?

THE DEFENDANT: CORRECT.

THE COURT: ALL RIGHT. THANK YOU, SIR.

HAVE YOU RECEIVED AND READ THE CHARGES AGAINST YOU?

THE DEFENDANT: YES, YOUR HONOR, I HAVE.

THE COURT: OKAY. I'M NOT ASKING IF THEY ARE TRUE OR FALSE.

BUT DO YOU UNDERSTAND WHAT THE GOVERNMENT SAYS YOU ALLEGEDLY -- JUST ALLEGEDLY -- DID WRONG?

THE DEFENDANT: CORRECT. YES.

THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

GOVERNMENT'S POSITION ON DETENTION.

MR. MITTAL: YOUR HONOR, WE'D STIPULATE TO PRETRIAL'S RECOMMENDATION.

WE SPOKE TO HIS WIFE. AND HE DID SELF-SURRENDER THIS MORNING.

THE ONLY CONDITION WE'D WANT TO ADD IS A CONTACT PROVISION WITH THE VICTIMS OR ANY WITNESSES IN THE INVESTIGATION. BUT BEYOND THAT, WE'D STIPULATE TO WHAT PRETRIAL HAS RECOMMENDED.

THE COURT: COUNSEL, ANY OBJECTION TO THAT ADDITIONAL CONDITION?

MR. KHOURI: WELL, NOT IN SUBSTANCE.

BUT WE ARE INVOLVED IN CIVIL LITIGATION. THERE'S A MATTER PENDING IN JUDGE CARNEY'S COURT THAT INVOLVES THE SAME UNDERLYING FACTS AS ALLEGED IN THE INDICTMENT.

THERE'S A COMPLAINT BROUGHT BY BLUE STONE AGAINST MR. POLEQUAPTEWA. THERE'S A COUNTERCLAIM BROUGHT BY MR. POLEQUAPTEWA AGAINST BLUE STONE.

THERE IS A TRIAL DATE SET IN JUDGE CARNEY'S COURT FOR JUNE 14TH I BELIEVE. AND THE ONLY REASON I CAN REMEMBER THAT IS THAT'S TWO DAYS BEFORE MY ANNIVERSARY.

AND THERE MAY -- WE'RE ASKING JUDGE CARNEY TO STAY THAT PROCEEDING PENDING COMPLETION OF THIS CASE.

THERE MAY BE DEPOSITIONS. THERE MAY BE INTERVIEWS.

SO, HIS LAWYERS -- WHICH IS MY LAW FIRM -- MAY BE IN CONTACT WITH BLUE STONE AND ITS OFFICERS, DIRECTORS, AND EMPLOYEES THAT ARE SO-CALLED VICTIMS IN THIS CASE.

BUT OTHER THAN THAT, I HAVE NO PROBLEM --

THE COURT: HOW LONG HAS THE CIVIL CASE BEEN GOING ON?

MR. KHOURI: OH, YOUR HONOR, I DIDN'T BRING THAT FILE WITH ME. BUT I BET ABOUT A YEAR AND A HALF. IT'S BEEN AWHILE.

(PAUSE IN PROCEEDINGS.)

THE COURT: 2014?

MR. KHOURI: DECEMBER OF 2014.

COUNSEL FOR BLUE STONE IS HERE IN THE COURTROOM.

MR. BERLINER: MATTHEW BERLINER, YOUR HONOR.

MR. KHOURI: MR. -- MR. BERLINER, YOUR HONOR.

(PAUSE IN PROCEEDINGS.)

MR. BERLINER: YOUR HONOR, WITH RESPECT TO THE CONTACT PROVISION, I MEAN, THE -- THE CONTACT WE WERE CONCERNED ABOUT IS WITH RESPECT TO THE DEFENDANT HIMSELF. I THINK THAT WE COULD DO A CARVE-OUT FOR CONTACTS THAT ARE RELATED TO THE CIVIL LITIGATION OR IN HIS COUNSEL'S PRESENCE.

THE COURT: WHO ARE YOU TRYING TO PREVENT HIM FROM CONTACTING? -- BLUE STONE.

MR. BERLINER: BLUE STONE OR ITS EMPLOYEES.

AND, OBVIOUSLY, WE'RE NOT -- OUR CONCERN ISN'T WITH LEGITIMATE CONTACTS RELATED TO THE CIVIL LITIGATION. IT WOULD

BE CONCERNED ABOUT ANY SORT OF OBSTRUCTION OR ANY -- THAT WOULD AFFECT THE CRIMINAL LITIGATION WHILE IT'S PENDING.

MR. KHOURI: YOUR HONOR, I HAVE NO -- NO ISSUE WITH THAT. ALTHOUGH, I'D LIKE BLUE STONE AND ITS EMPLOYEES NOT TO CONTACT MY CLIENT EITHER.

THE COURT: OKAY. WELL, I'M NOT GOING TO -- WELL, HMM.

INTERESTING CIRCUMSTANCES, GOVERNMENT, TO INDICT ON THIS.

ALL RIGHT.

MR. KHOURI: IT'S VERY DIPLOMATIC OF YOU, YOUR HONOR.

THE COURT: TWO YEARS LATER, HUH, AFTER THE ORIGINATION OF CIVIL LITIGATION FOR 5,000 IN DAMAGES, HUH?

MR. MITTAL: YOUR HONOR, JUST TO CLARIFY THE DAMAGES PORTION OF THE INDICTMENT --

THE COURT: WHO IS THE BLUE STONE'S COUNSEL? WHAT'S YOUR NAME, SIR?

MR. BERLINER: YOUR HONOR, MY NAME IS MATTHEW BERLINER WITH THE LAW FIRM COINCIDENTALLY NAMED BLUE CAPITAL -- CHANGED THE NAME BEFORE. THIS IS JUST A COINCIDENCE.

THE COURT: IS YOUR -- WHAT'S THE NAME OF YOUR LAW FIRM? -- BLUE CAPITAL?

MR. BERLINER: THE FIRM REPRESENTING BLUE STONE -- BLUE STONE IN THIS CASE IS A LAW FIRM CALLED BLUE CAPITAL.

THE COURT: AND THEY'RE REPRESENTING THEM ALSO IN THE

UNDERLYING CIVIL LITIGATION?

MR. BERLINER: I AM -- I AM LEAD TRIAL COUNSEL IN THE CIVIL LITIGATION, YOUR HONOR.

THE COURT: IS YOUR FIRM LOCATED IN ORANGE COUNTY?

MR. BERLINER: YEAH. SANTA ANA -- I MEAN, COSTA MESA, YOUR HONOR.

THE COURT: OKAY. WHO ARE THE OTHER PRINCIPALS OF YOUR LAW FIRM?

MR. BERLINER: A GENTLEMAN NAMED BRYAN NGO, N-G-O. ANOTHER ONE TITLED SAL PICARIELLO. THOSE ARE THE TWO MAIN PRINCIPALS.

THE FIRM HAS SINCE MERGED AND IS -- THE NAME WOULD BE FORTIS, LLP. AND THE PRINCIPALS OF THAT FIRM INCLUDE JOE HAYASHI, PAT ARRINGTON, ALEX CHEN, STANLEY SHER, MYSELF, AND ANOTHER GENTLEMAN NAMED SANG DANG.

THE COURT: ARE ANY OF THE PRINCIPALS OF THE PRIOR FIRM OR THE MERGED FIRM FORMER ASSISTANTS?

MR. BERLINER: ASSISTANT U.S. ATTORNEYS, YOUR HONOR?

NOT TO MY KNOWLEDGE.

THE COURT: OKAY.

MR. BERLINER: THEY'RE -- THEY ARE ALL EX BROBECK, DORSEY & WHITNEY AND MORRISON & FOERSTER ASSOCIATES. I DON'T THINK ANY SERVED IN ANY CAPACITY IN ANY DIVISION OF THE FEDERAL GOVERNMENT.

THE COURT: OKAY. INTERESTING.

ALL RIGHT. WELL, IT IS WHAT IT IS. YOU CAN DEAL WITH IT LATER. YOU CAN DEAL WITH IT WITH JUDGE CARNEY OR -- JUDGE CARNEY.

ALL RIGHT.

(PAUSE IN PROCEEDINGS.)

THE COURT: HE'S RELEASED ON O.R.

UNIDENTIFIED SPEAKER: YOUR HONOR, IS IT ALL RIGHT FOR ME TO SPEAK.

THE COURT: I DON'T EVEN KNOW WHO YOU ARE.

UNIDENTIFIED SPEAKER: SORRY. I'M THE DEFENDANT'S --

MR. KHOURI: YOUR HONOR, MAY I HAVE A MOMENT, PLEASE.

(PAUSE IN PROCEEDINGS.)

MR. KHOURI: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

HERE'S WHAT WE'RE GOING TO DO.

YOU'RE RELEASED ON O.R. OKAY. NO PRETRIAL SUPERVISION. NO -- NO NOTHING. ALL RIGHT.

MR. MITTAL: YOUR HONOR, COULD I -- COULD I --

THE DEFENDANT: THANK YOU, YOUR HONOR.

THE COURT: SURE.

MR. MITTAL: I THINK -- I UNDERSTAND THE COURT MAY HAVE SOME CONCERNS WITH THE CASE. BUT I THINK --

THE COURT: WELL, I'M JUST THINKING MY BOX IS VERY LIMITED -- FLIGHT, DANGER. HE HAS NO CRIMINAL HISTORY. SO, THERE'S NO DANGER ASPECT.

FLIGHT, HE HAS STRONG TIES HERE. HE COULD HAVE BEEN A LITTLE BIT MORE CANDID WITH PRETRIAL SERVICES. BUT I'M GOING TO CHALK THAT UP TO SOME MISCOMMUNICATION. PROBABLY -- I'M GOING TO PUT THE FAULT ON YOU BECAUSE I TRUST MY PRETRIAL SERVICES.

SO, WHAT YOU'RE GOING TO DO IS BE AS BEST -- YOU'RE GOING TO FOLLOW THE DIRECTIONS OF YOUR COUNSEL AND DO EXACTLY WHAT HE DOES. AND ANY TIME YOU SHOW UP IN FRONT OF COURT, YOU'RE GOING TO BE AS CANDID AND FORTHCOMING AS YOU CAN.

ALL RIGHT, GOVERNMENT. WHAT IS IT THAT YOU WANT TO TALK TO ME ABOUT?

MR. MITTAL: YOUR HONOR, I THINK THE TIES HERE ARE NO LONGER IN EXISTENCE. I MEAN, HE LIVES IN ARIZONA. HE DOESN'T HAVE TIES HERE CURRENTLY OUTSIDE OF HIS HOME, WHICH -- I MEAN, MY UNDERSTANDING IS THAT HIS WIFE IS THE ONE WHO HAS THE INCOME. I DON'T BELIEVE HE HAS ANY INCOME. SO, I DON'T KNOW WHAT --

THE COURT: WHERE IS HE GOING TO FLEE TO? I MEAN, HE WAS IN THE CENTRAL DISTRICT FOR EIGHT YEARS NOW. HE LIVES ON THE HOPI RESERVATION.

WHERE IS HE GOING TO FLEE -- WHAT IS YOUR -- FIRST TELL ME WHAT YOUR CONCERN IS.

IS IT FLIGHT OR DANGER?

MR. MITTAL: I THINK IT'S BOTH, YOUR HONOR. THIS IS A HACKING CASE. I MEAN, I THINK --

THE COURT: IT'S A HACKING CASE FROM 2014, CORRECT?

MR. MITTAL: YES, YOUR HONOR. IT'S BEEN UNDER INVESTIGATION SINCE 2014.

THE COURT: AREN'T THE INSTANT ALLEGATIONS --

MR. MITTAL: SO --

THE COURT: -- THE LEAST IMPORTANT? ISN'T THAT WHAT THE NINTH CIRCUIT TELLS US?

IS YOUR CONCERN THAT HE'S GOING TO HACK BLUE STONE INFORMATION AGAIN?

MR. MITTAL: YOUR HONOR, WE'RE STIPULATING TO A RELEASE. BUT WE THINK THAT THERE SHOULD BE AT LEAST A SURETY HERE. AND I THINK HE HAS A QUALIFIED SURETY IN THE COURTROOM WHO WILL SIGN.

I DON'T HAVE ANY --

THE COURT: DOESN'T THE BAIL REFORM ACT SAY I'M SUPPOSED TO IMPOSE THE LEAST RESTRICTIVE CONDITIONS?

MR. MITTAL: YES, YOUR HONOR. BUT I MEAN, THE O.R. BOND -- MY UNDERSTANDING FROM HIS ASSETS IS ALMOST -- IS MINIMAL TO BEING IN DEBT $20,000 ON CREDIT CARDS.

SO, IF WE WERE TO EVEN FORFEIT, I'M NOT SURE WHAT WE WOULD GET FROM THE DEFENDANT.

THE COURT: WELL, YOU WANT TO GET -- YOU WANT TO GET A SURETY FROM HIS WIFE FOR AN APPEARANCE BOND THAT'S $25,000 -- PRETRIAL. BUT SHE HAS 45,000 OF COMMUNITY DEBT?

SO, HOW MUCH VIABLE IS THE APPEARANCE BOND?

MR. MITTAL: YOUR HONOR, I BELIEVE SHE OWNS A HOME.

THE COURT: SHE DOES HAVE A HOME. AND IT'S FOR SALE. IT'S PRESENTLY IN GLENDALE. IT'S ON PAGE 3.

MR. MITTAL: YOUR HONOR --

THE COURT: SO, WHAT DO YOU WANT TO DO? YOU WANT TO PUT THE PROPERTY UP SO THAT IT PREVENTS THE SALES. AND IT WILL BE THE EQUIVALENT OF A LIS PENDENS ESSENTIALLY. AND IT WILL CLOUD TITLE.

MR. MITTAL: NO, YOUR HONOR. WE WOULD LIKE TO HAVE HIS WIFE BE THE ONE WHO KIND OF ASSURES THAT HE APPEARS FOR THIS CASE, AND THAT THERE'S NOTHING THAT HAPPENS OUTSIDE OF THE CASE THAT WOULD FURTHER ENDANGER THE COMMUNITY.

BUT I THINK THE COURT --

THE COURT: SO, THIS IS DANGER TO THE COMMUNITY? IS THAT THE -- YOU'RE ARGUING BOTH OR ONE?

MR. MITTAL: BOTH, YOUR HONOR.

THE COURT: OKAY.

MR. MITTAL: FOR THE CONDITIONS.

I MEAN, IT IS -- IT IS A HACKING CASE. SO, THERE IS ALWAYS A CONCERN ABOUT OBSTRUCTION IN THIS KIND OF SETTING.

I MEAN, HE'S --

THE COURT: IS IT A CLASSIC HACKING CASE? OR IS IT A BIT UNUSUAL FOR A HACKING CASE?

MR. MITTAL: UNFORTUNATELY, I WOULD SAY THAT THIS IS MORE COMMON, ACTUALLY. THIS IS THE MORE COMMON CIRCUMSTANCE.

WE HAVE FORMER EMPLOYEES WHO HAVE ACCESS TO DEVICES AND KNOW HOW TO GET INTO THE SYSTEMS AND DESTROY FILES.

AND AS TO THE LOSS, I WANT TO BE CLEAR THAT THAT'S WHAT THE STATUTE STATES. THAT'S NOT THE LOSS THAT WE BELIEVE IS AT ISSUE IN THE CASE.

THE COURT: I DON'T THINK I MENTIONED THE LOSS, DID I? OR I MENTIONED IT EARLIER.

MR. MITTAL: YES.

THE COURT: OKAY.

MR. MITTAL: I MEAN, IF WE'RE TALKING ABOUT THE DAMAGE THAT WAS DONE TO THE VICTIM CORPORATION, I THINK IT'S MORE ALONG THE LINES OF A QUARTER MILLION DOLLARS. BUT --

THE COURT: AND WHAT'S THAT BASED ON?

MR. MITTAL: BASED ON AN ANALYSIS FROM THE VICTIM CORPORATION.

THE COURT: IS THERE AN EXPERT REPORT ON THAT?

MR. MITTAL: WE DO HAVE A REPORT FROM THE VICTIM CORPORATION ON THAT.

THE COURT: WAS THAT EXPERT REPORT USED IN THE CIVIL LITIGATION?

MR. KHOURI: NO, YOUR HONOR. THERE HAS BEEN NO EXPERT DESIGNATED IN THE CIVIL LITIGATION. THE TIME FOR DISCOVERY IS PAST. AND WE NEVER RECEIVED ANY EXPERT REPORT IN COMPLIANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE.

I WOULD SUBMIT TO THE COURT THAT IF ANYONE HAS BEEN

DAMAGED, MY CLIENT'S LIFE AND EARNING CAPACITY AND FUTURE HAS BEEN DAMAGED BY WHAT BLUE STONE DID TO HIM.

I DON'T REALLY WANT TO GET INTO THE UNDERLYING FACTS OF THE CASE, BUT WE DISPUTE THAT THERE WAS ANY UNAUTHORIZED ACCESS TO THE BLUE STONE COMPUTERS.

WE DISPUTE EVERYTHING IN THE CIVIL CASE AND IN THE INDICTMENT.

THE COURT: WELL, IT'S NOT FOR ME. MINE IS A PRETTY NARROW WINDOW TODAY.

I'M JUST MAKING SOME OBSERVATIONS THAT IT'S AN INTERESTING MATTER.

I'LL LET YOU TAKE IT ALL UP WITH MR. -- WITH JUDGE CARNEY.

GOVERNMENT, FINAL WORD.

MR. MITTAL: YOUR HONOR, WE'D SUBMIT.

THE COURT: OKAY.

(PAUSE IN PROCEEDINGS.)

THE COURT: IF HE'S TO BE RELEASED, WHERE IS HE GOING TO LIVE? IS HE GOING TO LIVE IN ARIZONA, OR IS HE GOING TO LIVE HERE?

MR. KHOURI: HE IS GOING TO BE --

THE COURT: HE IS GOING TO BE RELEASED.

WHERE IS HE GOING TO LIVE? LET ME PUT IT THAT WAY.

MR. KHOURI: AT THE ADDRESS IN THE PRETRIAL SERVICES REPORT, WHICH IS TRIBAL LAND IN NORTHEASTERN ARIZONA WITH HIS

WIFE AND HIS THREE DAUGHTERS.

(PAUSE IN PROCEEDINGS.)

THE COURT: THEY ALL LIVE THERE NOW? -- ON THE --

MR. KHOURI: YES. YES, YOUR HONOR.

(PAUSE IN PROCEEDINGS.)

THE COURT: SO, YOU DIDN'T --

MR. KHOURI: HE IS ALSO -- I'M SORRY, YOUR HONOR.

HE IS ALSO ASKING THAT THE COURT ALLOW HIM TO TRAVEL WITHIN THE CONTINENTAL UNITED STATES. HE IS A BUSINESS CONSULTANT. HE HOLDS BOTH BACHELOR'S DEGREES AND MASTER'S DEGREES AND HAS EXPERIENCE IN PROVIDING STRATEGIC CONSULTING TO BUSINESSES, ESPECIALLY THOSE WITH TIES TO THE AMERICAN INDIAN COMMUNITY. AND OFTEN THEY CONTACT HIM. AND IT'S NECESSARY FOR HIM TO TRAVEL.

NOW, OBVIOUSLY WE CAN ALWAYS COME TO THE COURT FOR THAT PERMISSION. BUT ONE OF MY GOALS IN THIS CASE HAVING KNOWN MR. POLEQUAPTEWA AND HIS FAMILY FOR MANY YEARS IS THAT -- THAT HE GET BACK ON HIS FEET AND HE START EARNING MONEY AND HE DEVELOP HIS PROFESSIONAL SKILLS.

SO, I WOULD ASK THE COURT TO CONSIDER HOW YOU COULD FASHION A TERM OF RELEASE THAT WOULD ALLOW HIM TO TRAVEL WITHOUT MY FIRM HAVING TO COME TO COURT TO GET ORDERS.

MR. MITTAL: YOUR HONOR, COULD I BE HEARD ON THAT ISSUE?

THE COURT: SURE.

MR. MITTAL: I THINK THIS RAISES THE CONCERN THAT PRETRIAL PREVIOUSLY RAISED ABOUT HIS EMPLOYMENT HISTORY.

THIS IS THE FIRST TIME THAT THE DEFENDANT IS NOW SAYING HE'S A NATIONALLY TRAVELING CONSULTANT. HIS PRIOR STATEMENT TO PRETRIAL WAS THAT HE WAS RELYING ON THE FINANCIAL ASSISTANCE OF HIS WIFE AND HE WAS A STUDENT AND VOLUNTEER.

TO ME IT'S A LITTLE BIT ODD NOW THAT WE'RE HERE AND HIS CONDITIONS ARE BEING IMPOSED THAT WE'RE LEARNING ABOUT SOMETHING DIFFERENT THAT HE'S DOING. AND HE NEEDS TO TRAVEL TO THE ENTIRE CONTINENTAL U.S.

I WOULD BE OKAY WITH EMPLOYMENT CONDITIONS WHERE PRETRIAL HAS APPROVED OF IT. BUT, I MEAN, IF WE'RE GOING TO BE TRAVELING THROUGHOUT THE U.S., I THINK THAT'S A PROBLEM.

MR. KHOURI: AND IF I MAY EXPLAIN, YOUR HONOR.

HE WAS WORKING FOR AMERICORPS WHILE AT THE TRIBAL -- LIVING ON THE TRIBAL LANDS, WHICH IS SORT OF LIKE A DOMESTIC PEACE CORPS ORGANIZATION. NOW THAT'S EXPIRED. AND HE WANTS TO GET BACK TO STRATEGIC BUSINESS CONSULTING.

MR. POLEQUAPTEWA, HIS EMPLOYMENT HISTORY, HE WAS AT UCI FOR MANY YEARS IN AN EDUCATIONAL LEADERSHIP POSITION. AND HE HAS -- AND AFTER LEAVING THAT POSITION, HE HAD BEEN PROVIDING WHAT I'M TOLD IS CALLED "STRATEGIC DECISION-MAKING CONSULTING SERVICES TO BUSINESSES."

THAT'S SORT OF ALL ABOVE MY PAY GRADE, YOUR HONOR. BUT MY UNDERSTANDING IS THAT IT DOES REQUIRE HIM TO TRAVEL.

BUT, OF COURSE, IF THE COURT BELIEVES WE SHOULD CONSULT WITH THE GOVERNMENT AND ENTER INTO STIPULATIONS OR SEEK ORDERS, I'M HAPPY TO DO THAT.

(PAUSE IN PROCEEDINGS.)

THE COURT: GIVEN THE CIRCUMSTANCES, YOU KNOW WHAT WE'RE GOING TO DO.

ALL RIGHT. WE WILL DO A 25,000-DOLLAR APPEARANCE BOND BY HIS WIFE. AND WE'LL IMPOSE CONDITIONS OF HIS RELEASE.

AND THE CONDITION WILL BE RESIDES AS APPROVED BY PRETRIAL. DO NOT RELOCATE WITHOUT PRIOR PERMISSION FROM PRETRIAL.

SO, IF YOU'RE THINKING ABOUT MOVING DIFFERENT PLACES, I WANT YOU TO STAY IN TOUCH WITH PRETRIAL. OKAY.

AND YOU WOULD BE DOING I.T. CONSULTING? IS THAT THE TYPE OF CONSULTING?

THE DEFENDANT: KIND OF A STRATEGIC PLANNING AND MEETING FACILITATION -- JUST HELPING GROUPS OF PEOPLE AND ORGANIZATIONS WITH IDEAS AND HOW TO FOLLOW THROUGH ON PLANS.

THE COURT: OKAY. BUT NOT I.T., CORRECT?

THE DEFENDANT: I'M SURE SOME OF IT. LIKE, PEOPLE HAVE I.T. QUESTIONS. I DO HELP WITH THAT AND AS WELL AS, LIKE, MARKETING AND GRAPHIC DESIGN. SO, BASICALLY ANYTHING THAT AN ORGANIZATION NEEDS, I TRY TO HELP WITH THAT.

THE COURT: BUT NOT WHAT YOU WERE DOING AT BLUE STONE, RIGHT? -- BECAUSE YOU WERE MORE MANAGING THEIR I.T. --

AT LEAST IN SOME RESPECTS.

THE DEFENDANT: YEAH. NOT MANAGING I.T. SYSTEMS. MAYBE MAKING RECOMMENDATIONS ON EQUIPMENT TO PURCHASE. AND MAYBE HELP THEM SET THAT UP OR HELPING GETTING THEIR MARKETING MATERIALS IN ORDER.

THE COURT: OKAY.

THE DEFENDANT: OR DEVELOPING.

MR. KHOURI: YOUR HONOR, I THINK HIS BACHELOR'S DEGREE IS IN COMPUTER ENGINEERING OR COMPUTER --

THE DEFENDANT: SCIENCE.

MR. KHOURI: -- SCIENCE. SO, I DON'T BELIEVE THAT IT'S UNREASONABLE TO THINK THAT HE COULD BE THE I.T. PERSON AT A COMPANY WHO WANTS TO HIRE HIM.

THE COURT: OKAY.

SO, WHY DON'T WE DO THIS. WHY DON'T WE GO WITH JUST ACT -- MAINTAIN YOUR EMPLOYMENT AND JUST PROVIDE PROOF TO PRETRIAL. JUST -- JUST LET THEM KNOW WHAT YOU'RE DOING, WHERE YOU'RE AT. OKAY.

AND WE CAN JUST HAVE PROBABLY LIMITED PRETRIAL SUPERVISION JUST AS LONG AS HE CHECKS IN WITH YOU ON WHATEVER BASIS YOU DECIDE.

U.S. PRETRIAL SERVICES OFFICER: YOU CAN PUT HIM ON THE LOWEST LEVEL OF SUPERVISION, YOUR HONOR.

THE COURT: LET'S JUST DO THAT. JUST -- JUST SO WE KNOW WHERE YOU'RE AT AND WHAT YOU'RE DOING. OKAY.

AND THAT LEADS US WITH THE GOVERNMENT'S LAST REQUEST -- AVOID ALL CONTACT DIRECTLY OR INDIRECTLY.

I THINK IF THERE'S PENDING CIVIL LITIGATION --

IT'S BEEN PENDING SINCE DECEMBER 2014? I DON'T -- YOU KNOW, I DON'T WANT TO IMPOSE ANY SORT OF CONDITION THAT SOMEBODY STUMBLES IN AND VIOLATES BECAUSE THEY MEET IN A COURTROOM TOGETHER OR THEY'RE AT A SETTLEMENT OR WHAT HAVE YOU.

ALL RIGHT. GOVERNMENT, ANY OTHER CONDITIONS?

MR. MITTAL: I DON'T KNOW IF YOUR HONOR COVERED IT, BUT THE SURRENDERING OF THE PASSPORT AND TRAVEL RESTRICTIONS.

THE COURT: YEAH. I WAS GOING TO LEAVE THAT ALONE BECAUSE I DON'T WANT TO TAKE HIS TRAVEL DOCUMENTS. AND I DON'T WANT TO -- I MEAN, IF HE GETS AN OPPORTUNITY TO HAVE A JOB IN NORTH DAKOTA, I DON'T WANT TO TAKE THAT AWAY.

MR. MITTAL: I DON'T --

THE COURT: BEAR IN MIND THAT HE HAS A LOT OF DEBT. AND, SO, THE GOAL HERE IS NOT TO CAUSE HIM TO INCUR MORE BECAUSE HE'S TURNING DOWN JOBS OR OTHERWISE. LET'S GET HIM OUT THERE TRYING TO EARN SOME MONEY.

MR. MITTAL: YOUR HONOR, I DON'T BELIEVE --

THE COURT: GOVERNMENT SUBMIT?

MR. MITTAL: YOUR HONOR, I JUST DON'T BELIEVE HE NEEDS A PASSPORT TO TRAVEL WITHIN THE CONTINENTAL U.S.

AND I MEAN THE TRAVEL RESTRICTIONS, I THINK THE INTENT IS TO PREVENT AT LEAST INTERNATIONAL TRAVEL. BECAUSE

ONCE HE GOES OVERSEAS, WE CAN'T DO ANYTHING ABOUT IT.

I WOULD THINK WITH A CRIMINAL TRIAL PENDING, HE WOULDN'T BE PERMITTED TO GO ANYWHERE OUTSIDE THE COUNTRY.

THE COURT: HAVE YOU GONE ANYWHERE BESIDES MEXICO IN 2013?

THE DEFENDANT: (NO AUDIBLE RESPONSE.)

THE COURT: OKAY. ALL RIGHT.

GOVERNMENT SUBMIT?

MR. MITTAL: YES, YOUR HONOR.

THE COURT: ALL RIGHT. THOSE WILL BE THE CONDITIONS.

ALL RIGHT. MY CLERK IS GOING TO ASK YOU A FEW MORE QUESTIONS. THEY'RE A TOUCH SIMILAR. SO, IF YOU'D BE KIND ENOUGH TO JUST ANSWER THEM, I'D APPRECIATE IT.

THE CLERK: DID YOU -- DID YOU HEAR --

MR. KHOURI: YOUR HONOR, MAY I JUST HAVE ONE SECOND. HE'S --

(DEFENSE COUNSEL AND CLIENT CONFERRING.)

MR. KHOURI: THANK YOU VERY MUCH, YOUR HONOR.

THE CLERK: DID YOU HEAR AND UNDERSTAND THE STATEMENTS OF THIS COURT PERTAINING TO YOUR RIGHTS AND THE APPOINTMENT OF COUNSEL?

THE DEFENDANT: YES, MA'AM.

THE CLERK: DID YOU SEE AND SIGN A STATEMENT OF YOUR RIGHTS?

THE DEFENDANT: YES, MA'AM.

THE CLERK: DID YOU RECEIVE A COPY OF THE INDICTMENT?
THE DEFENDANT: YES, MA'AM.
THE CLERK: WOULD YOU LIKE THE INDICTMENT READ TO YOU AT THIS TIME?
THE DEFENDANT: NO, MA'AM.
THE CLERK: HOW DO YOU PLEAD TO THE CHARGES CONTAINED IN THE INDICTMENT --
THE DEFENDANT: NOT --
THE CLERK: -- GUILTY OR NOT GUILTY?
THE DEFENDANT: NOT GUILTY.
THE CLERK: THANK YOU, SIR.
THIS CASE HAS BEEN ASSIGNED TO THE HONORABLE CORMAC J. CARNEY FOR TRIAL AND FURTHER PROCEEDINGS.
TRIAL IS SET FOR JUNE 28TH, 2016 AT 8:30 A.M.
PRETRIAL CONFERENCE IS SET FOR JUNE 20TH, 2016 AT 9:00 A.M.
COUNSEL ARE REFERRED TO THE COURT'S WEBSITE FOR COPIES OF JUDGE CARNEY'S PRETRIAL ORDER.
AND COUNSEL FOR THE GOVERNMENT, IF I CAN GET A TRIAL ESTIMATE, PLEASE.
MR. MITTAL: FIVE DAYS.
THE CLERK: THANK YOU.
THE COURT: MR. KHOURI, DO YOU PRACTICE CRIMINAL LAW REGULARLY HERE IN THE CENTRAL DISTRICT?
MR. KHOURI: YES, YOUR HONOR. I WAS FORMERLY ON THE

CJA PANEL FOR MANY YEARS UNTIL I GAVE IT UP A FEW YEARS AGO.

AND I PRACTICE CRIMINAL DEFENSE NORMALLY IN THE HEALTH CARE AREA, NOT ONLY HERE BUT IN SAN DIEGO AND LOS ANGELES AND SACRAMENTO AND TEXAS AND ALL OVER THE UNITED STATES.

THE COURT: OKAY.

MR. KHOURI: BUT I'VE NEVER HAD THE PLEASURE OF APPEARING BEFORE YOU BEFORE.

THE COURT: OKAY. I JUST WAS CURIOUS. AND IT'S BEEN AWHILE.

YOU KNOW, THERE WAS A PROGRAM IMPLEMENTED BACK IN -- I DON'T KNOW IF I'VE BEEN DOING IT SINCE '11 OR 2010. JUST REMEMBER AND LOOK IT UP IF YOU'RE NOT FAMILIAR WITH IT OR ASK AROUND ABOUT SOMETHING CALLED "CASA."

OKAY.

MR. KHOURI: ALL RIGHT, YOUR HONOR. I -- I KNOW WHAT YOU'RE TALKING ABOUT. AND I ACTUALLY WAS KIND OF THINKING ABOUT SOMETHING ON THE ALTERNATIVE ROUTE, SO.

THE COURT: I JUST WANTED TO MAKE SURE I HIGHLIGHTED IT FOR YOU.

MR. KHOURI: ALL RIGHT.

THE COURT: DIDN'T WANT IT TO GET LOST.

MR. KHOURI: OKAY.

THANK YOU, YOUR HONOR.

THE COURT: ALL OF YOU BE WELL.

OH, RELEASE IS FORTHWITH.

SO, WE'RE GOING TO PROCESS YOU OUT. OKAY.

THE DEFENDANT: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

THE CLERK: ALL RISE.

THIS COURT IS --

(PROCEEDINGS ADJOURNED AT 2:33 P.M.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/S/ DOROTHY BABYKIN 6/22/16

FEDERALLY CERTIFIED TRANSCRIBER DATED

DOROTHY BABYKIN